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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/701,700	11/04/2003	Jere F. Irwin	IR3-054	7095
21567	7590	04/19/2006	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201			ADAMS, GREGORY W	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/701,700	<b>Applicant(s)</b> IRWIN ET AL.	
	<b>Examiner</b> Gregory W. Adams	<b>Art Unit</b> 3652	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 January 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-4, 6-11, 33-36, 38-43, 46, 47, 50 and 52-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2, 6, 33, 36, 38, 40 and 46 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 7-11, 34, 35, 39, 41-43, 47, 50 and 52-54 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***General Comments***

This application has been transferred to Examiner Gregory W. Adams.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-4, 6, 33, 36, 38, 40 & 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2, line 2: change "protuberances" to --rods-- to remove the indefiniteness caused by mixing protuberances and rods.

Claim 3: cancel claim 3.

Claim 4: cancel claim 4.

Claim 6, line 6: rewrite "cups" to recite --articles--. Here as well as in other claims

Applicant's use of cups and articles interchangeably is indefinite because articles may comprise more than cups. Consistency removes the indefiniteness.

Claim 6, line 9: after line 9 insert the following: --a plurality of rods extend in a helical array wherein said rods are attached to said barrel inside surface;--.

This eliminates the lack of antecedent basis problem in line 10 which recites "the helical array of rods".

Claim 33, line 1: rewrite “further comprising providing projections extending” to recite –wherein the projections extend--. The language “further comprising” is indefinite because it means the subsequent claim language adds structure to the apparatus. However, claim 33 merely defines/describes the projections which are recited in the independent claim above.

Claim 36, line 4: insert –and— in between “barrel” and “using”.

Claim 38, line 2: delete “concave”. Although applicant claims a barrel and the specification discloses a concave portion the drawings do not show a concave portion and barrels do not necessarily include a concave portion. Further, without figures to assist its indefinite as to which direction the concave portion extends across, e.g. longitudinally or radially. (See also claim 46 below.)

Claim 40, lines 1-2: rewrite “further comprising a plurality of projections extending” to recite –wherein the plurality of projections extend--. The language “further comprising” is indefinite because it means the subsequent claim language adds structure to the apparatus. However, claim 40 merely defines/describes the projections which are recited in the independent claim above.

Claim 40, line 2: rewrite “extending” to recite –extend--.

Claim 40, line 3: rewrite “configured” to recite –are configured--.

Claim 46, line 4: rewrite “a barrel having a concave portion configured” to recite – a barrel configured--.

Claim 46, line 6: rewrite "drum operative to agitate articles" to recite –drum operative to agitate cups--.

Claim 46, line 7: rewrite "to drive the articles and stack of articles" to recite –to drive the cups and stack of cups--.

Claim 46, line 15: rewrite "stacks of articles" to recite –stacks of cups--.

Claim 46, line 17: rewrite "move individual articles" to recite –move individual cups--.

#### ***Allowable Subject Matter***

Claims 2, 6, 33, 36, 38, 40 & 46 would be allowable if amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claim 3-4, 7-11, 34-35, 39, 41-43, 47, 50, 52-54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory W. Adams whose telephone number is (571) 272-8101. The examiner can normally be reached on M-Th., 8:00-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (571) 272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3652

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GWA



JAMES W. KEENAN  
PRIMARY EXAMINER